

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICROSOFT CORPORATION,

Plaintiff,

-v-

DATATERN, INC.,

Defendant.

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SAP AG and SAP AMERICA, INC.,

Plaintiffs,

-v-

DATATERN, INC.

Defendant.

----- X

KATHERINE B. FORREST, District Judge:

On August 29, 2012, defendant DataTern, Inc., ("defendant") submitted a letter to the Court conceding that it would not be able to prove infringement on the basis of the Court's construction of the contested claims in this action. The next day, this Court issued an order requiring the parties to inform the Court of their views on how the case should proceed in light of this concession.

In response to that order, defendant moved for declaratory judgment in favor of plaintiffs Microsoft Corp., SAP AG, and SAP

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11 Civ. 2365 (KBF)
11 Civ. 2648 (KBF)

ORDER

America, Inc., (collectively, "plaintiffs") reserving the right to appeal this Court's claim construction. Defendant also moved to file an expert declaration under seal in support of that motion. Plaintiffs responded to the order by submitting a letter to the Court requesting that the case proceed to summary judgment in order to create a full record for appeal. On September 17, 2012, the Court endorsed plaintiffs' letter, ordering the parties to continue with expert depositions and summary judgment briefing as requested by plaintiffs.

Accordingly, it is hereby

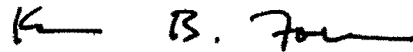
ORDERED that defendant's motion to file the Gupta Expert report under seal is GRANTED, should defendant still wish to file the report.

IT IS FURTHER ORDERED that defendant's motion for declaratory judgment and dismissal without prejudice of its invalidity claims is DENIED.

The Clerk of the Court is directed to terminate the motions at docket numbers 143 and 145 of case number 11 Civ. 2365 and at docket numbers 153 and 155 of case number 11 Civ. 2648.

SO ORDERED:

Dated: New York, New York
October 4, 2012



KATHERINE B. FORREST
United States District Judge